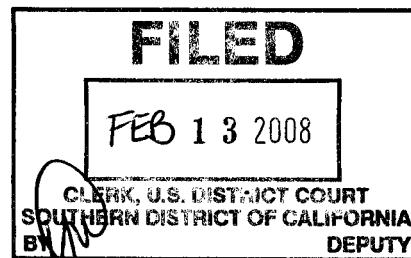


ORIGINAL

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UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3353-JM
11 Plaintiff,)
12 v.)
13 JOSE HEREDIA-GUZMAN (1),)
14 Defendant.)
15

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS AND ORDER
THEREON**

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Luella M.
18 Caldito, Assistant United States Attorney, and defendant Jose Heredia-Guzman, by and through and
19 with the advice and consent of defense counsel, Frank A. Balistrieri, that:

20 1. Defendant agrees to execute this stipulation on or before the disposition hearing and
21 to participate in a full and complete inquiry by the Court into whether defendant knowingly,
22 intelligently and voluntarily entered into it.

23 2. The material witnesses, Martin Sanchez-Campos, Juan Ramon Yupit-Chac, and
24 Nicanora Moreno-Koh, in this case:

25 a. Are aliens with no lawful right to enter or remain in the United States;
26 b. Entered or attempted to enter the United States illegally on or about
27 November 13, 2007 with the assistance of codefendant Juan Carlos Vasquez-Mendoza, who acted
28 as their foot guide;

c. Were found with codefendant Juan Carlos Vasquez-Mendoza in a vehicle

1 driven by Defendant in Calexico, California and that Defendant knew or acted in reckless disregard
2 of the fact that they were aliens with no lawful right to enter or remain in the United States;

3 d. Were paying or having others pay on their behalf an undisclosed amount and
4 \$2300 to others to be brought into the United States illegally and/or transported illegally to their
5 destination therein; and,

6 e. May be released and remanded immediately to the Department of Homeland
7 Security for return to their country of origin.

8 3. After the material witnesses are ordered released by the Court pursuant to this
9 stipulation and joint motion, if defendant withdraws his guilty plea to the charge set forth above,
10 defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial,
11 sentencing, appeal or collateral attack, that:

12 a. The stipulated facts set forth in paragraph 2 above shall be admitted as
13 substantive evidence;

14 b. The United States may elicit hearsay testimony from arresting agents
15 regarding any statements made by the material witness(es) provided in discovery, and such
16 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
17 against interest of (an) unavailable witness(es); and,

18 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
19 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
20 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
21 waives the right to confront and cross-examine the material witness(es) in this case.

22 4. By signing this stipulation and joint motion, defendant certifies that defendant has
23 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
24 further that defendant has discussed the terms of this stipulation and joint motion with defense
25 counsel and fully understands its meaning and effect.

26 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
27 immediate release and remand of the above-named material witness to the Department of Homeland

28 Stipulation of Fact and Joint Motion for Release of
Material Witness And Order Thereon in
United States v. Jose Heredia-Guzman (1)

1 Security for return to their country of origin.

2 It is STIPULATED AND AGREED this date.

3 Respectfully submitted,

4 KAREN P. HEWITT
United States Attorney

5 Dated: 2-12-08.


6 LUELLA M. CALDITO
7 Assistant United States Attorney

8 Dated: 2-12-08.


9 FRANK A. BALISTRERI
10 Defense Counsel for Jose Heredia-Guzman

11 Dated: 2-12-08.


12 JOSE HEREDIA-GUZMAN
13 Defendant

ORDER

2 Upon joint application and motion of the parties, and for good cause shown,
3 **THE STIPULATION** is admitted into evidence, and,
4 **IT IS ORDERED** that the above-named material witnesses be released and remanded
5 forthwith to the Department of Homeland Security for return to her country of origin.

SO ORDERED

Dated:

John Attoe